

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS

Civil Action No. 04-10996 RWZ

HARVEY HOLMES and
ANNIE HOLMES,

Plaintiffs,

v.

VOLVO TRUCKS NORTH
AMERICA, INC., and
ANDCO, INC.

Defendant.

Joint Pretrial Conference Memorandum

1. Concise summary of the evidence
 - a. The plaintiff's evidence will show that on May 30, 2001 the Plaintiff Harvey Holmes, married to Plaintiff Annie Holmes, was employed as a truck driver for Pool Builders, Inc. At approximately 11:00 AM he was operating his employer's vehicle, a Volvo model WG64 Tractor on Route 128 when suddenly the bolts holding the right front wheel snapped off of the axle of the truck, causing the wheel to roll away from the truck and causing the truck to roll over and severely injure Harvey Holmes. The truck had been recently serviced by Defendant Andco. Inc. for warranty work for the antilock brake system. The evidence will show that the truck was defective, not fit for the ordinary purposes for which it was to be used and created an unreasonably dangerous condition when used for its intended purpose. Mr. Holmes suffered several injuries including: a severe fracture dislocation of his cervical spine necessitating surgery to insert a cervical screw and plate at C6-7 with an interbody fusion and graft placement; maxillary fracture; subdural hematoma; collapsed lung; initial coma (six weeks); and initial quadriplegia. His medical bills to date total \$378,058.89; and lost wages to date total \$146,548.47. Defendant Andco Inc sold the subject vehicle which was manufactured by Defendant Volvo Trucks North America, Inc. to Plaintiff's employer. The vehicle was purchased brand new and there had been no maintenance/warranty work performed to the wheel prior to the accident.
 - b. The Defendant states that the evidence will show the vehicle in question was neither defective nor unreasonably dangerous at time of sale.

2. Established facts

- a. The Plaintiffs Harvey Holmes and Annie Holmes are married and reside in Massachusetts.
- b. Defendant, Volvo Trucks North America, Inc. is a duly organized corporation formed pursuant to the laws of the State of Delaware.
- c. Defendant, Andco, Inc. is a duly organized corporation formed pursuant to the laws of the State of Rhode Island.
- d. Defendant Volvo assembled the vehicle which is the subject of this suit.
- e. Defendant Andco, Inc. sold the vehicle which is the subject of this suit.

3. Contested Issues of Fact

- a. Liability
- b. Amount/Nature of Damages

4. Jurisdictional Questions

None

5. Questions Raised by Pending Motions

None at this time

6. Issues of Law

None

7. Requested amendments to the pleadings

Plaintiff will move to amend the negligence claim against Andco., Inc to include negligent maintenance/repair while performing warranty work

8. Additional matters to aid in the disposition of the action

None

9. Probable length of trial

Four (4) Days - 6 days.

10. The names, addresses and telephone numbers of witnesses to be called (expert and others) and whether the testimony of any such witness is intended to be presented by deposition)
 - a. Harvey Holmes, 313 Moody Street, Lowell, Ma (978-453-2629)
 - a. Annie Holmes, 313 Moody Street, Lowell, Ma. (978-453-2629)
 - b. Trooper Daniel H. Thom, Massachusetts State Police, Framingham, Ma. (508-820-2300)
 - c. Barry R. Copplestone, Heavy Equipment Management, Inc., 892 Worcester Road, Suite 120, Wellesley, Ma. (781-237-7877)
 - d. Keeper of the Records Heavy Equipment Management, Inc., 892 Worcester Road, Suite 120, Wellesley, Ma. (781-237-7877)
 - e. James Scutti, Massachusetts Materials Research, Inc. 1500 Century Drive, West Boylston, Ma. 01583 (508-835-6262)
 - f. Keeper of the Records of Massachusetts Materials Research, Inc. 1500 Century Drive, West Boylston, Ma. 01583 (508-835-6262)
 - g. Stephen M. Harris, Wright Group, Inc., P. O. Box 738, Marlboro, Ma. 01752 (508-485-2900)
 - h. Keeper of the Records of Wright Group, Inc., P. O. Box 738, Marlboro, Ma. 01752 (508-485-2900)
 - i. Dr. Paul Glazer, 330 Brookline Avenue, CC2, Boston, Massachusetts 02215-5400 (617-667-2225)
 - j. Keeper of Records, Dr. Paul Glazer, 330 Brookline Avenue, CC2, Boston, Massachusetts 02215-5400 (617-667-2225)
 - k. Dr. Richard Warnock, 200 Sutton Street, Suite 120, North Andover, Ma. 01845 (978-686-6464)
 - l. Ronald C. McCarthy, 35 Colby Way, Westwood, Ma., President of Pool Builders, Inc., 810 Providence Highway, Norwood, Ma. 02062 (617-762-0017)

- m. Dr. David Malins, 33 Bartlett Street, Lowell, Ma. 01852 (978-452-7000)
- n. VNA/Hospice of Greater Lowell, Inc., 336 Central Street, Lowell, Ma. 01852 (978-459-9343)
- o. Keeper of the Records Beth Israel Deaconess, 330 Brookline Ave., Boston, Ma. 02215 (671-754-2400)
- p. Keeper of the Records of Body Works Physical Therapy, 103 Market Street, Lowell, Ma. 01852, (781-932-8149)
- q. Keeper of the Records Vencor Hospital, 1515 Commonwealth Avenue, Boston, Ma. 02135 (617-254-1100)
- r. Keeper of the Records of Kindred Hospital, 1515 Commonwealth Avenue, Boston, Ma. 02135 (617-254-1100), may have discoverable information relevant to disputed facts alleged with particularity in the pleadings.
- s. Steven Shapley, mechanic at Pool Builders, Inc. 810 Providence Highway, Norwood, Ma. 02062 (617-762-0017)
- t. Volume Metric Mixers &&&&&&&&&&
- u. John Anderson Jr., Andco, Inc., 170 Amaral Street, East Providence, RI
- v. Heino W. Scharf, Director of Product Assurance Volvo Trucks North America, Inc., 7900 National Service Road, Greensboro, NC
- w. Charles E. Bird, P.E., Sr. Engineer, Product Assurance, Volvo Trucks North America, Inc. –NRV, 4881 Cougar Trail Road, Dublin, VA.
- x. Noel Hainssehn, 6 Burr Road, Hingham, Ma. (201-681-9594)
- y. David Dean, 1138 River Street, Hyde Park, Ma. (617-361-5020)
- z. Any and all witnesses listed by the Defendants

Defendant witnesses:

- a. Any and all witnesses listed by the Plaintiff
- b. James Anderson, Andco, Inc,
- c. Joseph Newman, Volvo Truck North America, Inc.

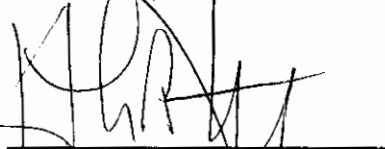
11. The proposed exhibits:

- a. Medical record, reports and bills of Beth Israel Deaconess
- b. Medical record, reports and bills of Vencor Hospital
- c. Medical record, reports and bills of Kindred Hospital
- d. Medical record, reports and bills of Dr. Paul Glazer
- e. Medical record, reports and bills of Dr. Richard Warnock
- f. Medical record, reports and bills of Dr. Richard Malins
- g. Medical record, reports and bills of VNA/Hospice of Lowell
- h. Medical record, reports and bills of Body Works Physical Therapy
- i. Police report of Trooper David H. Thom
- j. Report of Barry R. Copplestone
- k. Report of Stephen M. Harris
- l. Income Tax Records of Harvey Holmes from 1998 to the present
- m. Photographs of tire, wheel, and truck
- n. Any and all of Defendants' responses to Discovery including responses to Plaintiff's Requests for Production of Documents
- o. Initial disclosures provided by Volvo including: Invoice No. 00/04038; Truck Build Record, Order 871281 and Warranty Certificate
- p. Initial disclosures provided by Andco, Inc. including Invoice No.: 00/04038
- q. Any and all exhibits listed by the Defendants

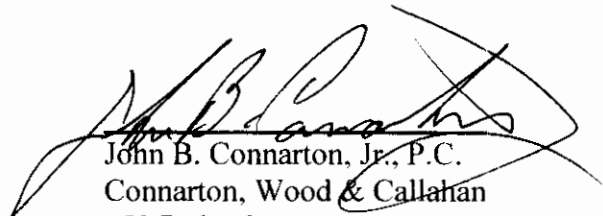
12. Parties' respective positions on any remaining objections to the evidence identified in the pretrial disclosure required by Fed. R. Civ. 26(a)(3).

N/A as the disclosures were not made. Plaintiff requests additional time to file such disclosures to having just received Defendants responses to discovery this week, there being no prejudice to the defendant.

October 20, 2005



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